

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 391 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DAHYYALAL NANJIBHAI KACHA

Versus

STATE OF GUJARAT

Appearance:

MR KB ANANDJIWALA for Petitioner
MR MA BUKHARI APP for Respondent No. 1
MR DD VYAS for newly added party.

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 15/10/97

ORAL JUDGEMENT

Rule. Mr. M.A. Bukhari, learned A.P.P. waives service for respondent No.1. Mr. D.D. Vyas, Senior Advocate waives service for the newly added party.

Right from the beginning when the matter came up for hearing on 20.8.1997, Shri Anandjiwala had requested that record and proceedings be called and had further

communicated that the petitioner is desirous of reimbursing the entire amount to the institution which has suffered loss as per the prosecution case. After making that arrangement only Shri Anandjiwala was to submit that the petitioner be dealt with leniently. That was the limited prayer he had to make on the face of the order of conviction passed by the learned Metropolitan Magistrate and confirmed by the learned Additional City Sessions Judge, Ahmedabad. The revisional jurisdiction of this court is, therefore, invoked only on the limited point of sentence by way of mitigating circumstances. The aforesaid offer of repaying the institution which has suffered loss has already been acted upon and the amount has been deposited on 9.9.1997.

However, the institution which has suffered loss, i.e., Gujarat State Khadi Gramodyog Board, has serious objection to the aforesaid request of modifying the order of sentence imposed by the trial court. It has set out its anguish on this point in its affidavit at page 54 and has drawn to the attention of the Court that the allegations against the petitioner are related to depriving benefits to beneficiaries of various schemes and with the help of his co-accused, benefitted himself from the amount of subsidy, which should have been passed on to the beneficiaries and that is how in place of Rs.3,220/- an amount of Rs.93,220/- came to be withdrawn resulting into defalcation of Rs.90,000/- as per the prosecution case. Against the said defalcation, the trial court as well as the Additional City Sessions Judge have already rendered decision against the petitioner. From the prosecution point of view, therefore, the issue is closed and the petitioner is held guilty.

In view of the aforesaid background the petitioner had offered to make reimbursement to the institution which he has already done. Shri Vyas appearing on behalf of the institution has strongly urged that reimbursement is made after lapse of almost 11 years and if the petitioner wants to make good the loss suffered by the institution by way of interest the court may also bear in mind the prevalent rate of interest which is at least 1% per month.

If that view is taken, of course, the amount of interest working out would be Rs.1,23,000 approximately. In this background learned advocate Shri Anandjiwala very strongly urged that the petitioner is no longer in a position to fulfil the additional burden as for reimbursement to the institution he has managed to collect the amount and for that he is already paying

higher rate of interest and as such is put to great disadvantage. He, therefore, urges that whatever be the amount the court may impose on the petitioner in place of the order of sentence of imprisonment, the petitioner may be given sufficient time to pay the amount so ordered.

So far as the State is concerned, it has left the matter entirely to the Court. However, Shri Bukhari did say that the petitioner should not be given undue advantage. Mr. Bukhari submitted that when the petitioner has come with this request at least he should have been prepared to pay the amount within reasonable period.

Shri Anandjiwala requested that the petitioner be given time of four months. He requested for the period upto 28.2.1998. Shri Bukhari strongly objected to it and in his submission period of four weeks may be given to the petitioner.

Shri Anandjiwala again urges that the petitioner has already paid huge sum of Rs.90,000/- for which he is paying interest. He has to maintain his family and has also to collect the additional sum that may be imposed on him by way of fine. Therefore the time as requested may be granted upto 28.2.1998. Shri Anandjiwala further submitted that the petitioner shall file an undertaking of strictly complying with the date thus granted and not asking for extension of time and shall also mention to the effect that if he fails to pay the additional fine by the date so granted by the court, he shall undergo the sentence as may be imposed.

In the aforesaid circumstances, an additional fine of Rs.20,000/- is imposed on the petitioner towards compensation to the institution for the late payment and loss suffered by it. The petitioner shall file an undertaking that he shall pay the said amount on or before 28.2.1998 and shall not ask for extension of time and that on his failure to do so he shall undergo sentence of R.I. for six months. The order of sentence passed by the trial court and confirmed by the appellate court is accordingly modified and in place of substantive sentence the sum of fine as ordered is substituted and in default, the petitioner shall undergo R.I. for six months. The petitioner is permitted to deposit the additional amount of fine in this court. On the said amount being deposited the newly added party is permitted to withdraw the same under this order. Rule is made absolute to the aforesaid extent only.